

MORRISON | FOERSTER

PLEASE RESPOND TO:
P.O. BOX 8130
WALNUT CREEK
CALIFORNIA 94596-8130

101 YGNACIO VALLEY ROAD
SUITE 450
WALNUT CREEK
CALIFORNIA 94596-4094

TELEPHONE: 925.295.3300
FACSIMILE: 925.946.9912

WWW.MOFO.COM

MORRISON • FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.

DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY

TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

December 1, 2005

Writer's Direct Contact
925/295-3317
CMorrison@mofocom

By Telefacsimile and Mail

Mr. John Kopchik
Community Development Dept.
Contra Costa County
651 Pine St., North Wing
4th floor
Martinez, CA 94553

Ms. Lori Rinek
Division Chief
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

05 DEC -1 PM 4:47
COMMUNICATIONS SECTION

Re: East Contra Costa County Habitat Conservation Plan and Natural Communities Conservation Plan and associated EIR/EIS (collectively, the "HCP")

Dear John and Lori:

Our client, Roddy Ranch PBC, LLC, owns a controlling interest in the 2110-acre property located adjacent to the municipal boundaries of Antioch and commonly known as "Roddy Ranch." As you know, in November 2005 the voters of Antioch overwhelmingly approved an initiative measure that brings large portions of Roddy Ranch into the City's urban limit line, and designates that land for urban development. Although the City of Antioch is not participating in the HCP, we thought it appropriate to comment on the draft because it proposes certain objectives for Roddy Ranch.

The conservation of the San Joaquin kit fox ("SJKF") is a cornerstone of the HCP. The HCP focuses its attention on four "predicted" movement routes or habitat linkages between Black Diamond Mines Regional Park and the Los Vaqueros watershed, including corridors through Roddy Ranch in Lone Tree/Horse Valley and Deer Valley. Although the HCP (including the draft EIR/EIS) acknowledges that the City of Antioch may expand to the south, it characterizes the Lone Tree/Horse Valley corridor as having the highest potential viability

John Kopchik
December 1, 2005
Page Two

for SJKF movement on a long-term basis. It also proposes Deer Valley as a less viable, but "secondary," movement corridor for SJKF.

Based upon these assessments, all of Roddy Ranch is proposed by the HCP as a high priority acquisition area. If the City of Antioch were to participate in the current effort (which it has elected not to do), this would result in development essentially being prohibited within Roddy Ranch.

You have occasionally described the HCP as being "growth neutral." In other words, the proposed permit area will respond to changes in established urban limit lines in East Contra Costa County. Although the HCP has no regulatory effect on Roddy Ranch, we believe it should reflect Antioch's desires for growth as expressed by the voters. If the conservation strategy is premised on the acquisition of properties that will be developed, there will be a significant question -- coming out of the blocks -- as to the viability of the plan and the accuracy of the associated impact analysis.

Thus, we believe the HCP should be revised to respond to the voters' expressed will. This means that, at least, Horse Valley should be removed from the plan's identification of priority acquisition areas. With respect to Deer Valley, it is possible that some portions will be used as mitigation for development in Horse Valley, in which case those lands would not be eligible for acquisition by the HCP (although in that instance they would provide some conservation value). But our client's plans for Deer Valley have not been developed, and it would be premature for the HCP to presume that they will be put to any particular use.

We will not take direct issue here with the corridor modeling upon which the HCP is based. But we will point out that it is only modeling and that, whatever the suitability of Horse Valley or Deer Valley may be, no sitings of SJKF have occurred in those valleys and any characterization of them as actual corridors is necessarily conjectural. Thus, it may in fact be possible to develop alternative conservation strategies for SJKF conservation in the region that are just as appropriate as those now proposed in the HCP.

N-1

N-2

John Kopchik
December 1, 2005
Page Three

We appreciate the opportunity to submit these comments, and look forward to your response.

Sincerely,



Clark Morrison

cc: Sheila Larsen
Carl Wilcox
Janice Gan
Victor Carniglia
Steve Garrett
Dan Boatright
John Zentner

Response to Letter N

Response to Comment N-1

In response to the HCP/NCCP, the commenter requests that HCP should reflect Antioch's desires for growth as expressed by the voters, asserts that acquisition of property that will be developed puts the viability and accuracy of the impact assessment of plan in question, and makes specific requests for changes concerning Horse Valley and Deer Valley.

As shown in Chapter 5 in the Final HCP/NCCP, acquisition priorities in the eastern part of Horse Valley and Lone Tree Valley have been changed from high-priority to low-priority. Likewise, Chapter 5 has been revised to indicate that the probable expansion of the Antioch city limits to the south makes the complete acquisition of movement routes through Horse and Lone Tree Valley infeasible. Instead, conservation of narrower movement routes will be pursued through the western and central portions of Horse Valley through Subzone 2h (west of and through the Roddy Ranch Golf Course) to connect to larger proposed conservation areas in Lone Tree Valley. The high-priority for Deer Valley has been retained as it is considered essential to providing for the conservation of San Joaquin kit fox in the area. The rationale for its inclusion is explained in Chapter 5.

Revisions to the HCP/NCCP

The HCP/NCCP has been revised as described above.

Response to Comment N-2

In response to the HCP/NCCP, the commenter states that characterization of Horse Valley or Deer Valley as SJKF corridors is "conjectural" because no SJKF have been sited in these locations and that there may be alternative conservation SJKF conservation strategies as appropriate as that proposed in the HCP.

As described in Chapter 5 of the HCP/NCCP, SJKF have been observed in 53 locations in the inventory area including Black Diamond Mine Regional Park, Round Valley Regional Preserve, and the Los Vaqueros Watershed. SJKF occupy home ranges of 1 – 12 square miles and can move up to 20 miles in a season for foraging or dispersal. Staff scientists supporting the HCP/NCCP examined the kit fox habitat model developed for this Plan, existing and future land use patterns, aerial photographs, topography, kit fox home range size and kit fox sighting to define the most viable movement routes through the inventory area. The model is based on biological considerations such as kit fox prefer flat to slightly sloping land because it increases their line of sight to spot predators. They are at risk to predation when the slope gets too steep or the vegetation is scrubby, as this limits line of sight to evade predators.

Regarding alternatives, in theory there may be alternative SJKF conservation strategies other than that proposed in the HCP/NCCP. Since the commenter provides no idea whatsoever as to what such alternatives might be, no responses can be provided to this assertion and the feasibility and value of such unspecified alternatives cannot be assessed.

No changes to the HCP/NCCP or EIS/EIR are required.

